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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,623	07/15/2004	Philippe Moussou	C 2319 PCT/US	2222

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COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

EXAMINER

MI, QIUWEN

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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05/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,623	Applicant(s) MOUSSOU ET AL.	
	Examiner Qiuwen Mi	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41, 43-48, 53, 54, 56-62 is/are pending in the application.
- 4a) Of the above claim(s) 57-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41, 43-48, 53, 54, 56, 61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 41, 43-48, 53, 54, 56, and new claims 61 and 62 in the reply filed on 4/3/2007 is acknowledged. The traversal is on the ground(s) that Examiner failed to provide examples how different invention groups are distinct and different. This is not found persuasive because in a 371 case, as long as there is no special technical feature in the application, which was stated clearly in the previous office action, accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1., and therefore lack of unity of invention exists.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's argument regarding election of species is found convincing, therefore the requirement for the election of species is hereby withdrawn.

Claims pending

Applicant has cancelled claims 42, 49-52, and 55. Claims 41, 43-48, 53, 54, 56-62 are pending.

Claim Rejections –35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41, 43, and 44 are rejected under 35 USC § 102 (b) as being anticipated by Klaenhammer et al (US 5,618,723).

Klaenhammer et al teach rice fermentation prepared by microorganisms (lactobacillus, lactococcus, leuconostoc, and yeast) inoculation (col 9, lines 42-48).

Therefore, the reference is deemed to anticipate the instant claim above.

Claims 61 and 62 are rejected under 35 USC § 102 (b) as being anticipated by Uno et al (US 2001/0041203).

Uno et al teach adding water and yeast to rice, heating at 90°C for 30 min (pretreatment), fermenting at 20°C for 2 days, and then being filtered [p0129, 0130]. Uno et al also teach that the invention being used in cosmetics [p0076, 0077, 0079, 0080].

Therefore, the reference is deemed to anticipate the instant claim above.

Claims 61 and 62 are rejected under 35 USC § 102 (b) as being anticipated by Muramatsu (JP 2000080025).

Muramatsu teaches a rice-fermented extract [rice bran obtained from the surface side of the rice, rice embryo bud (seed)] for bathing agent or cosmetic, having a useful component, especially amino acid.

Therefore, the reference is deemed to anticipate the instant claim above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41, 43-48, 53, 54, 56, 61, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klaenhammer et al (US 5,618,723) in view of Uno et al (US 2001/0041203), further in view of Miyazaki et al (US 7,090,875).

Klaenhammer et al (US 5,618,723) teach rice fermentation prepared by microorganisms (lactobacillus, lactococcus, leuconostoc, and yeast) inoculation (col 9, lines 42-48).

Klaenhammer et al do not teach pH, pretreatment, temperature, and separation method.

Uno et al teach adding water and yeast to rice, heating at 90°C for 30 min (pretreatment), fermenting at 20°C for 2 days, and then being filtered [p0129, 0130]. Uno et al also teach that the invention being used in cosmetics [p0076, 0077, 0079, 0080].

Miyazaki et al teach a fermented product prepared by microorganisms such as lactobacillus, lactococcus, and leuconostoc at pH preferably 5.0-6.0 (col 5, lines 50-55).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the pretreatment, and the separation (filtering) method of Uno and the pH of Miyazaki et al in Klaenhammer et al for the following reasons.

It is clear from Uno et al that liquefying process (pretreatment) can facilitate fibrous hydrolase activity and ferulic acid esterase activity, and contribute to decomposition of fibers in cereals and liberation of ferulic acid [p0071] which can be further used in cosmetics [p0076], therefore it is obvious for one of ordinary skill in the art at the time the invention was made to follow the procedure of Uno et al in Klaenhammer et al to make the fermented rice extract so that the rice fermentation product in Klaenhammer et al can be used in cosmetics. It is further clear from Miyazaki et al that the fermented product can improve dry, roughed, wrinkled, or loosened skin and prevent the skin from aging (col 2, lines 47-55), therefore it is obvious for one of ordinary skill in the art at the time the invention was made to use the pH of Miyazaki et al in the fermented product in Klaenhammer et al to achieve the antiaging effect in cosmetics. Since the both the inventions of Uno et al and Miyazaki et al yielded beneficial results in the cosmetic industry, one of ordinary skill in the art would have been motivated to make the modifications. The result-effective adjustment in conventional working parameters (e.g., determining an appropriate amount of the components within the composition) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

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Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

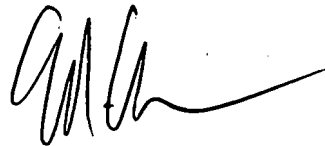
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry Mckelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Michael Meller', with a long horizontal flourish extending to the right.

**MICHAEL MELLER
PRIMARY EXAMINER**